

MEMORANDUM OF LAW

DATE: June 17, 1986

TO: Councilmember Gloria D. McColl

FROM: City Attorney

SUBJECT: Questions regarding ARCO

Your memorandum to us dated May 15, 1986 asks two questions regarding the issue of prohibiting sales of alcoholic beverages at gasoline stations. In this specific instance, you indicated that ARCO has a ground lease on a parcel you own, said ground lease for the operation of a mini-market and self-service gasoline station.

Your questions are:

1. May my office discuss this issue with ARCO?
2. May I participate in discussion of this issue should it come to Council or Committee?

In response to the first question, I previously advised you not to discuss the issue with ARCO representatives because it will be coming before the Council as a legislative matter and such prior contact should be avoided. You have agreed.

The answer to your second question is governed by the Political Reform Act of 1974, as amended (herein the "Act"). Our opinion and advice is for you to refrain from any participation in this matter. The applicable provisions of the Act are sections 87101 and 87103 which read as follows:

87100. Public Officials; State and Local.

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. ¶Emphasis added.σ

87103. Financial Interest. An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

. . . .

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

. . . .
. . . .

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater. ¶Emphasis added.σ

Section 82030 of the Act defines "income" as a payment for, among other things, rents received.

Construing the Act in its totality on the facts presented, we must conclude that the proposed action before Council will impact ARCO because of prohibition of sales of alcoholic beverages. ARCO, as your lessee, is a source of income to you and clearly falls within the constraints of sections 87100 and 87103(c). The fact that your lease is a fixed rental does not change the intent or effect of this section.

In summary, therefore, we advise you not to participate in any of the forthcoming proceedings related to the matter of prohibiting sales of alcoholic beverages at gasoline service stations.

JOHN W. WITT, City Attorney

By

Jack Katz, Chief Deputy

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